

HOUSE BILL 242

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Doreen Y. Gallegos

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO HEALTH CARE; LIMITING PRESCRIBING POWER FOR CONTACT LENSES AND SPECTACLES; PROVIDING FOR CRIMINAL PENALTIES AND CIVIL REMEDY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** [NEW MATERIAL] CONTACT LENSES--SPECTACLES--  
LIMITATIONS ON PRESCRIPTIONS--CRIMINAL PENALTY--CIVIL REMEDY--  
EXCEPTIONS.--

A. Unless the person is licensed pursuant to the Optometry Act, the Medical Practice Act or the Osteopathic

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Medicine Act, a person shall not:

- (1) perform an eye examination on an individual physically located in the state at the time of the eye examination; or
- (2) write a prescription for contact lenses or spectacles.

B. A person shall not write a prescription for contact lenses or spectacles unless an eye examination is performed before writing the prescription. The prescription shall take into consideration any medical findings and any refractive error determined during the eye examination.

C. A person who violates a provision of this section is guilty of SJC→:

~~(1) for a first or second conviction,~~←SJC a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978 SJC→; ~~or~~

~~(2) for a third or subsequent conviction, a fourth degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978~~←SJC.

D. The board of optometry, the New Mexico medical board, the board of osteopathic medicine or any other person potentially aggrieved by a violation of this section may bring a suit in a court of competent jurisdiction to enjoin a violation of a provision of this section.

E. Nothing in this section shall be construed to

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prohibit:

(1) a health care provider from using telehealth in accordance with the provisions of the New Mexico Telehealth Act for ocular diseases;

(2) a vision screening performed in a school by a nurse, physician assistant, osteopathic physician assistant or another provider otherwise authorized pursuant to state law;

(3) an optician from completing a prescription for spectacles or contact lenses in accordance with the provisions of the Optometry Act;

(4) a technician from providing an eye care screening program at a health fair, not-for-profit event, not-for-profit public vision van service, public health event or other similar event;

(5) a physician assistant licensed pursuant to the Medical Practice Act, or an osteopathic physician assistant licensed pursuant to the Osteopathic Medicine Act, working under the supervision of an ophthalmologist licensed pursuant to the Medical Practice Act or the Osteopathic Medicine Act, from performing an eye examination on an individual physically located in the state at the time of the eye examination; or

(6) a vision screening performed by another provider otherwise authorized pursuant to state law.

F. As used in this section:

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(1) "autorefractor" means any electronic computer or automated testing device used remotely, in person or through any other communication interface to provide an objective or subjective measurement of an individual's refractive error;

(2) "contact lens" means any lens placed directly on the surface of the eye, regardless of whether or not it is intended to correct a visual defect, including any cosmetic, therapeutic or corrective lens;

(3) "eye examination" means an in-person assessment at a physician's office or an optometrist's office, in a hospital setting or in a hospital health system setting that:

(a) is performed in accordance with the applicable standard of care;

(b) consists of an assessment of the ocular health and visual status of an individual;

(c) does not consist of solely objective or subjective refractive data or information generated by an automated testing device, including an autorefractor or kiosk, in order to establish a medical diagnosis or for the determination of refractive error; and

(d) is performed on an individual who is physically located in this state at the time of the assessment;

(4) "kiosk" means any automatic or electronic

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equipment, application or computer software designed to be used on a telephone, teleconference device, computer, virtual reality device or internet-based device that can be used remotely, in person or through any other communication interface to conduct an eye examination or determine refractive error;

(5) "prescription" means an optometrist's or ophthalmologist's handwritten or electronic order for spectacle lenses or contact lenses based on an eye examination that corrects refractive error; and

(6) "spectacles" means an optical instrument or device worn or used by an individual that has one or more lenses designed to correct or enhance vision addressing the visual needs of the individual wearer, commonly known as "glasses" or "eyeglasses", including spectacles that may be adjusted by the wearer to achieve different types of visual correction or enhancement. "Spectacles" does not mean:

(a) an optical instrument or device that is not intended to correct or enhance vision or that does not require consideration of the visual status of the individual who will use the optical instrument or device; or

(b) eyewear that is sold without a prescription.